IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 264 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

SAURASHTRA PRINTS PVT. LTD.

Appearance:
MR MANISH R BHATT for Petitioner
Mr. S.N.Divatia for respondent

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 05/04/99

ORAL JUDGEMENT

#. This is an application under Section 256(2) of the Income Tax Act. As the Income Tax Appellate Authority has refused to refer the following two questions of law said to be arising out of its order dated 5.1.1996:

"1.Whether, the Appellate Tribunal is right in

law and on facts in confirming the order passed by the Commissioner of Income-Tax (Appeal) allowing the application under Section 154 and thereby directing the Assessing Officer to allow interest on the amount of refund of TDS payment?

2.Whether, the Appellate Tribunal ought not to have appreciated the issue was debatable and the claim could not have been allowed under section 154 of the Act?"

#. The facts giving rise to this application are that the assessee had deposited as advance tax under Section 210 for the assessment year 1984-85 a sum of Rs.2,45,000/-. Assessee was also entitled to credit of Rs.94,030/- by way of tax deducted at source of different incomes earned by him. In the first instance assessee was granted a refund of Rs.62144/- on which interest in terms of Section 214 was also granted which amounted to Rs.25,960/-. In giving this refund credit of tax deducted at source was not taken into account. As a result of order of CIT (Appeals) dated 1.7.198 for giving effect thereto further refund of Rs.85,603/- was calculated by order dated 14.3.1988, by taking into account credit to assessee on account of tax deducted at source. However, on this additional sum of refund no interest was calculated. Assessee therefore made an application dated 23.5.89 claiming interest under Section 214 of the Income Tax Act, 1961. In its order dated 30.8.89 captioned under Section 154 the Dy. Commissioner of Income Tax (Asst.) Special Range, Ahmedabad worked out the computation of amount refundable vide order dated 14.3.88 as under:

"Tax payable as per
order dt. 14.3.88 Rs.1,91,283
Less: Advance tax paid u/s.210 Rs.2,45,000

Rs. 53,717
Interest due on excess advance
tax of Rs. 53,717
Less: Refund granted as per order
u/s. 143(3) dt. 14.3.88 Rs. 62,144

Demand Rs. 8,427
Less : TDS Payment Rs. 94,030

Refund Allowed as per
order dt. 14.3.88 Rs. 85,603
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#. However, it held that no interest was payable on refund of tax deducted at source under Section 214 of the Income Tax Act and disallowed the application. On appeal CIT (Appeals) held the order to be erroneous and upheld the contention of assessee. He directed the assessing officer to recalculate the interest under Section 214 first deducting the TDS from the tax payable and thereafter giving credit for advance tax paid.

#. Revenue's appeal before Tribunal was dismissed on 5.1.1998. The Tribunal agreeing with the CIT (Appeals). It relied on the decision of the Supreme Court in Modi Industries Limited and Anr. v. CIT & Anr. 216 ITR 759, which laid down that where any tax is paid after 31.3.1975, which include tax deducted at source and advance tax to the extent same has been retained by assessing officer as payment of tax in discharge of liability under the assessment order and the same becomes refundable as a result of orders in appeal or revision, whole or in part, is subject to payment of interest under Section 244(1A) of the Act. The amount of advance tax and tax deducted at source must be treated as payment of tax pursuant to order of assessment on and from the date of assessment order.

#. In the light of facts stated above, computation of refund in its order of Dy. Commissioner of Income Tax (Asst.) reveals that as per order in appeal passed by CIT (Appeals) on 7.1.1988 the total tax payable for the assessment year 1984-85 came to be Rs.1,91,283/-. For the satisfaction of which two amounts were to the credit of assessee, viz., advance tax deposit by the assessee at Rs.2,45,000/- and tax deducted at source on the income accrued or received by the assessee by the person from whom such income was to flow. The assessing officer has given the credit of advance tax deposit by the assessee in the first instance and calculated the amount of refund on that basis, then adjusted the amount of refund already made and thus finding that out of advance tax deposit extra sum has been refunded, found outstanding to be recoverable from the assessee, then adjusted the same from the tax deducted at source amount and the balance was found refundable. In the order he also mentioned that on initial amount of refund interest under Section 214 was calculated and granted to assessee.

#. As will be seen presently the ground in which the CIT (Appeals) have allowed the claim of interest to the assessee is that in the first instance amount of TDS ought to have been adjusted and thereafter the advance tax, is faultlessly obvious from the scheme of the Act.

#. The provisions of the Income Tax Act in this connection are clear. There cannot be two opinion that before advance tax can be adjusted against the demand against the computation of tax arrived at as a result of assessment, the tax deducted at source if any has to be adjusted. Chapter XVII of the Act deals with modes of collection and recovery of tax payable under the Act. Section 190 prescribes the mode of collection of tax earlier than the regular assessment, in two ways, namely, either it is collected by deduction or collection at source that is to say the amount at a prescribed rate is deducted by the person from whom the receipt containing income flows to the assessee or by advance payment of tax by the assessee himself directly under provisions contained in Part C of Chapter XVIII notwithstanding that the regular assessment in respect of any income for the relevant assessment year is to be made in later assessment year in accordance with the provisions of the Act. Section 191 envisages that it is only where income tax has not been deducted at source in accordance with the provisions of this Chapter, the income tax shall be payable by the assessee directly. The advance tax payment is payment of tax towards tax liability yet to be determined is by the assessee directly. Thus in view of Section 191, liability to pay directly whether by way of advance tax or as a result of regular assessment is after taking into consideration the tax collected by deduction at source. For this tax deducted at source of the income, under Section 199 assessee is to be given credit for the assessment year for which such income is assessable.

#. It will be apposite to refer to the relevant provisions of Part C of Chapter XVII relating to assessee's liability to pay advance tax, as they stood at the relevant time of assessment year 1984-85 with which we are concerned. Section 207 declared assessee liable to pay advance tax on its current income, that is to say income relating to concerned assessment year in accordance with the provisions of Section 208 to 219. Section 208 declared that liability to pay tax that will arise where total income of assessee excluding the income under head Capital Gains, exceeds the limit prescribed therein. It further said that where the total advance tax payable him did not exceed fifteen hundred rupees, the assessee other than company local authority or registered firm shall not be liable to pay advance tax. Section 209 provide for computation of advance tax payable by the assessee. The provision clearly envisages that liability to pay advance tax is to he computed only

after giving credit of tax deducted at source from the tax payable. We reproduce relevant for the present purposes sub section (1)(a) of Section 209 as it stood during the relevant assessment year:

"209(1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of subsections (2) and (3), be computed as follows:

(a)(i) his total income of the latest previous year in respect of which he has been assessed by way of regular assessment shall first be ascertained;

(ii) the amount of capital gains and income referred to in Sub-clause (ix) of clause (24) of section 2, if any, included in such total income shall be deducted therefrom, and on the balance income-tax shall be calculated at the rates in force in the financial year;

(iii) the income-tax so calculated shall be reduced by the amount of income tax which would be deductible during the said financial year in accordance with the provisions of sections 192 to 194, section 194A, section 194C, section 194D and section 195 on any income (as computed before allowing any deduction admissible under this Act) on which tax is required to be deducted under the said sections and which has been taken into account in computing the said total income;

(iv) the net amount of income-tax calculated in accordance with Sub-clause (iii) shall, subject to the provisions of clauses(c) and (d), be the advance tax payable"

#. Thus the very liability of advance tax is determined after adjusting the amount of tax deducted at source from the tax payable of the estimated income. This is further clear from forms Nos. 28 and 28A prescribed under Rules for the purpose. Where advance tax has to be paid in pursuance of an order of assessing officer, the form NO. 28 prescribing form of order determining net amount of tax payable as advance requires deduction of tax which is deductible under Sections 192-195 on any income which has been taken into account in computing the income which is subjected to advance tax. Likewise, under Form No. 28A, where the assessee is required to intimate the assessing officer about payment of advance tax also envisage adjustment of amount of tax deductible under Section 192 to 195 on any income. The same position prevails under existing provisions. Section 209(1)(d) as it now exists

reads as under:

"209(1)(d) the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable"

##. Thus from the perusal of the provisions of Income Tax Act and Rules framed thereunder, it becomes apparent that tax deducted at source has to be taken into account in the first instance as credit to the assessee's account for discharge of his liability to pay tax under the Income Tax Act before his liability to pay even advance tax is to be considered. It is only after adjustment of tax deducted at source during the relevant period for which advance tax is to be paid by the assessee that the liability of advance tax is computed and the assessee is required to discharge the remaining liability. As a necessary corollary it follows that on computation of tax payable as per the regular assessment, in the first instance credit has to be given to tax deducted at source. If any amount still remains payable it calls for adjustment against advance tax paid, if any; then only the question arise whether to issue a demand or order refund of the amount of balance.

##. Obviously in the present case, the assessing officer has taken reverse route while adjusting the credits of tax collected on assessee's account against the tax payable. As per the order dated 14.3.88 before giving credit for the amount of tax deducted at source, he has adjusted advance tax paid under Section 210 separately. No credit envisaged under Section 199 is given to the assessee of the tax deducted at source. Provisions of Sections 191, 199 and 209 have not been kept in view which clearly mandate that advance tax liability itself is to be determined only after adjustment of TDS.

##. If that process is rectified the question whether interest is payable under Section 214 on the amount of refund which is referrable to tax deducted at source would not arise in the present case inasmuch as the entire amount that would be refundable in the present

case would be on the basis of excess payment of advance tax over the tax payable after giving the credit of tax deducted at source against the tax payable to which the assessee is entitled under Section 199, read with Section 209. before the estimation of advance tax payable under the Act is made.

##. The order of CIT (Appeals) as affirmed by the Tribunal granting rectification by directing computation of interest on refund of Rs.85,603/- is founded on this obvious position that firstly credit of tax deducted as source has to be given and then advance tax paid is to be adjusted against tax payable, the other question that whether interest on any amount of refund referable to excess TDS deposit does not survive for consideration being academic.

##. Law is well settled that where the answer to any question required to be referred, is self evident or is finally determined by decision of Supreme Court, the same need not be referred to notwithstanding such may be a question of law. Nor any question, which is of academic for the purpose of determining the issue need be referred. The two questions required to be referred to this court under this application falls in the category of cases where answer is self evident. Merely because one has to look at various provisions of statute does not make the answer any less self evident, unless the same requires a process of weighing pros and cons of evaluating different possible views.

##. As we have come to the conclusion that mistake in computation of refund amount by first adjusting advance tax and thereafter adjusting TDS is apparent on the face of record and contrary to clear provisions of the Act on which two opinion are not possible, no further question suggested by learned counsel for the Revenue would arise for consideration, viz., whether any sum is payable by way of interest on account of refund becoming due because of the excess payment of TDS as the same will be academic in present case. We are therefore of the opinion, in the facts and circumstances of the present case, the answer being self-evident the order declining to make reference cannot be said to be erroneous. We therefore decline to grant this application.

Application is rejected.

(Rajesh Balia,J) (A.R.Dave, J)